

## REMARKS

In response to the Office Action dated November 16, 2006 the current claims have been amended.

### Claim Objections

The errors in claims 57 and 68 have been corrected as proposed by the Examiner.

### Claim Rejections 35 U.S.C. §112

The negative limitation "without the need...for physician and patient" in claims 55 and 63 has been deleted.

### Claim Rejections §35 U.S.C. 102(e)

Claims 55 and 63 have been amended in response to the rejection of claims 55-57, 61-66, and 69-70 under 35 U.S.C. §102(e) as being anticipated by Hacker.

As noted by the Examiner, Hacker teaches a patient accessible database that may be used by the physician and patient. Nevertheless, Applicant does not believe that Hacker contemplates allowing patients access to their clinical medical records, but describes instead a system where the patients manage a personal database independent of that used clinically by their physician.

In the system of Hacker, the medical provider may only "add information to the patient's medical record" when the patient has "allowed access". See column 8, lines 4-7. Even when the medical provider "feels they need access to blocked data", the "patient can decide whether or not to grant access". See column 8, lines 13-17. Apparently blocking access by the medical provider is possible even when the data is required for emergency medical care. See generally, column 7, lines 62 through column 8, line 4 (the patient can provide override of this feature, but implicitly need not).

In addition, the selection and entry of data into the database of Hacker is under the patient's control, not the control of a healthcare provider. Hacker indicates that when the patient visits with a "non-networked, uncooperative, or otherwise nonparticipating medical provider" the data may be updated using "manual input" of "patient acquired hard copy records"--implicitly by the patient or an agent of the patient. See generally column 10, lines 54-59. Such patient controlled data, while acceptable for the patient's

own use, does not provide the assurances of accuracy, integrity and freedom from fraudulent modification, necessary of a clinical health record.

It is apparent, therefore, that the database of Hacker cannot be the principal medical record used by a medical provider to manage the health of the patient and that for ethical, legal, and practical reasons there is necessarily an implicit, second "clinical database" relied upon by the physician. Because Hacker necessarily assumes a second clinical database used by medical providers, Hacker does not teach eliminating separate databases (one for the patient, and one for the physician). Hacker explicitly states that the clinical set of records maintained by the physician can be a source for the records entered into the system of Hacker by the patient.

It is believed that this important distinction between Hacker and the present invention is captured by the existing claim language requiring a single shared database for patient and physician, that is:

a medical record database defined by a single data model describing a location for each clinical information data element within the database, wherein the same location is accessed by both provider and patient.

Nevertheless, the Applicant has buttressed this distinction by additional amendments to independent claims 55 and 63 which now require that the shared "medical record database" of the present invention be "sufficient" for the delivery of medical services to the patient and serves as "a principal reference in the delivery of medical services to the patient" by the provider. It is believed that these distinctions are also implicit in the fact that the present invention provides a "clinical medical records", and not simply a partial and/or unverified copy of a patient's medical files managed by the patient. The claim preamble now emphasizes that this database is "healthcare organization controlled" as distinct from Hacker's patient controlled database.

The Applicant submits that Hacker teaches away from using a single database by proposing a system that requires at least two databases—one verifiable copy of each record stored by each medical provider relating to the care that provider gives, and another copy stored in the patient-managed database. The system of Hacker, in which medical providers cannot supervise the addition of data to the database, cannot alter that data freely, and cannot access that data at will, clearly teaches away from the essence of

the present invention which is to give patients direct access to their actual medical record in a timely fashion. Critically, Hacker's need for multiple separate databases, in order for the patient to have access to his or her medical records, teaches away from allowing the patient to have actual access to their clinical medical records, thereby eliminating the problems of completeness, accuracy, and concurrency, that are inherent in multiple database systems.

For the above reasons, it is believed that the present claims 55 and 63 as amended, and those claims dependent on these independent claims, are novel and non-obvious over Hacker and allowance of these claims is respectfully requested. The Examiner is encouraged to contact the undersigned if the Examiner believes that a conference discussion of these claims might be helpful.

Respectfully submitted,

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